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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 212.

HURON HOLDING CORPORATION and NATIONAL SURETY CORPORATION,

Petitioners,

—against—

LINCOLN MINE OPERATING COMPANY,

Respondent.

BRIEF IN OPPOSITION TO RESPONDENT'S PETITION FOR REHEARING.

LEONARD G. BISCO,
DANIEL GORDON JUDGE,
Counsel for Petitioners.

ALONZO L. TYLER,
Of Counsel.

THE COURT PRESS, N. Y. C.

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*BRIEF IN OPPOSITION TO RESPONDENT'S PETITION FOR REHEARING.**

Statement.

The above entitled cause was heard by this Court on writ of certiorari, and argued (on behalf of petitioners) and submitted on January 13th, 1941. The unanimous opinion of the Court in favor of petitioners was delivered by Mr. Justice Black on February 3rd, 1941, reported in 311 U. S. —, 61 S. Ct. 513, 85 L. Ed. 465.

A petition for rehearing has now been filed on behalf of respondent, Lincoln Mine Operating Company. Lincoln prays (p. 13) for rehearing, "that full and complete opportunity be given to present this cause to the end that all of the facts and the law may be fully brought before this Court * * *." Of course the respondent has already had full and complete opportunity to present its case. But its petition now mani-

* Filed pursuant to permission, granted March 17, 1941.

fests a wish to abandon its prior legal position, to assert new "facts" (p. 2) and to raise new "points in issue" (p. 5).

It is generally understood that such a complete change of front is not permissible on rehearing.

The editors of "*American Jurisprudence*" in Volume 3 at page 350, Section 806, state:

> "In civil cases it is a well-recognized rule that questions not advanced on the original hearing will not be considered on the petition for a rehearing". [Citing *Independent Wireless Telegraph Co.* v. *Radio Corporation*, 270 U. S. 84, and many other authorities.]

On the same page of the same textbook it is said (top p. 350):

> "The general rule which governs an application for rehearing limits the same to the record on appeal; matters outside the record cannot be shown by affidavit. Newly discovered evidence cannot be considered." [Citing *Russell* v. *Southard*, 12 How. (U. S.) 139, and other cases.]

The petition for rehearing contains no claim that any part of this Court's decision was erroneous. Respondent seeks rather to change the data on which that decision was based. For example, this Court said in its opinion:

> "First. Here, New York law clearly governed the validity of the attachment proceedings. The Idaho District Court found, *and it is not denied*, that those proceedings complied with the formal requirements of New York's attachment statutes." (Italics ours.)

But Lincoln now offers to deny the formal regularity of the New York attachment proceedings. (pp. 4, 12).

Likewise in the opinion it is stated:

> "It has not been urged here, nor was it urged in the courts below, that Huron was guilty of any negligence, misconduct or fraud in connection with the New York judgment. It has not been claimed that there was a failure to give Lincoln notice of the New York suit against it."

However, Lincoln attempts now to create contentions of this kind, although the record on which the case is presented contains no suggestion of factual support for any such claims.

This reversal of position comes too late in any event. But it is submitted also that many of the assertions and conclusions contained in the petition for rehearing are either false or unsupported by the record. Some of these assertions are discussed seriatim, as follows:

1. Lincoln's assertion that it was not notified of the attachment.

The central assertion on which the respondent's argument is based (pp. 2, 4, 5, 6, 7, 8, 9) is to the effect that Lincoln was not given notice of the attachment proceedings, either "actual or constructive".

This assertion is without foundation in the Transcript of Record. On the contrary, the record makes it plain that Mr. Langroise, Mr. Griffin and Mr. Casterlin, Lincoln's original attorneys who knew the facts at the time (R. 1 and 70), never claimed that Huron failed to give notice of the attachment. If they had, they would have produced evidence to that effect, so

as to defeat Huron's motion for satisfaction of judgment.

There was plenty of time and opportunity for Lincoln to produce such proof, if it had existed. Huron's motion was filed on March 13th, 1939 (R. 31, 33, 50). Lincoln's counter-motion for judgment on the appeal bond was made on March 14th (R. 35). The motions did not come on to be heard before Judge Cavanah until March 21st (R. 46 and 54). Thereafter, the Surety Company's answer was filed on March 22nd (R. 42). Still later the District Judge accepted amendments to Huron's motion and to the Surety Company's answer on March 29th (R. 44 and 45). The motions were further considered by the District Judge and not decided until May 4th, 1939 (R. 54, 60, 61 and 62). Both motions were considered on the same evidence (R. 53 and 60). It is recited that the motion against the Surety Company "was heard on the pleadings and documentary evidence" (R. 46), and that the motion for satisfaction of the judgment was decided after Lincoln had "filed its answer thereto, * * * and evidence having been introduced" (R. 54).

The findings of the District Court show that the attachment was levied on July 12, 1938 (R. 49, 56), and that the Sheriff of New York County on July 19, 1938, "duly filed his report and appraisal of said property so attached" (R. 49, 56). The District Court also found as a fact that the summons and complaint were served upon Lincoln in Idaho on July 18, 1938 (R. 49, 56), thus complying with the requirements of the New York law (Civil Practice Act, §§235 and 905; *The American Bank* v. *Goss,* 236 N. Y. 488, 496) and of this Court with respect to due process

(*Pennoyer* v. *Neff*, 95 U. S. 714 at 722; *Harris* v. *Balk*, 198 U. S. 215, at 227).

The District Court further found [R. 59 (IV), bot. 52] on the proofs produced before it, that the payments made by Huron were "not voluntary and were binding upon the Lincoln Mine Operating Company * * *".

Many of the documents submitted to the District Court, including the affidavits of Bisco, Schneider and Bessell (mentioned at R. 51 and 52), are omitted from the transcript of record. Since the transcript was prepared by Lincoln's attorneys for their appeal from the District Court judgments to the Circuit Court of Appeals (R. 69-70), it is to be assumed that none of the omitted material contained evidence essential to Lincoln's contentions.

The points taken by Lincoln on its appeal to the Circuit Court of Appeals contain no suggestion of claim that Huron was negligent or that Lincoln did not receive notice of the New York proceedings (R. 65-68).

Finally, the notice of attorney's lien filed by Lincoln's attorneys (R. 8-9) and the receipt given by them in satisfaction of said lien (R. 32-33) are consistent only with the conclusion that Lincoln's attorneys knew, well before the judgment was entered in New York (R. 23), that the New York action was based upon an attachment and therefore constituted a threat to the attorneys' lien.

2. The summons and complaint served on Lincoln were in proper form.

Lincoln also seeks to criticize (p. 3) the summons and complaint in the New York action because its form was the same as that used in an action *in*

personam. The sufficiency of such a summons and complaint, where the Court has in fact taken jurisdiction *in rem* by attachment, is well settled.

Pennoyer v. *Neff, supra,* top page 726 and bottom page 730;
Harris v. *Balk,* 198 U. S. 215, middle of page 227;
New York Civil Practice Act, §§235 and 905;
The American Bank v. *Goss,* 236 N. Y. 488 at page 496.

3. Lincoln had a full year to assert a defense, if it had any, in the New York proceedings.

Lincoln now suggests for the first time (bot. p. 9) that if it "had received notice of the attachment proceedings, it would have resisted the judgment, as it had a valid defense * * *". It is significant that the petition omits any indication of the nature of such defense. Lincoln in fact had ample opportunity to open its default and assert any defense it had, but it did not choose to do so (so far as the record shows).

The New York judgment was entered on February 27, 1939 (R. 23). Lincoln admits (top p. 4) that it was fully apprised of this judgment when Huron moved for satisfaction of the Idaho judgment on March 13, 1939 (R. 9, 31, 33, 50). The New York Civil Practice Act (§108) gave Lincoln a full year within which to move to open its default, upon showing that judgment was taken through either "mistake, inadvertence, surprise or excusable neglect". The statute reads in full:

"§108. **Relief against default judgments and orders.** The court, in its discretion, and upon such terms as justice requires, at any time

within one year after notice thereof, may relieve a party from a judgment, order or other proceeding, taken against him through his mistake, inadvertence, surprise or excusable neglect."

Cf. this situation with that discussed in *Harris* v. *Balk, supra,* at page 228.

Where a judgment is set aside for any reason, restitution is provided for by Section 529 of the Civil Practice Act:

"§529. **Restitution after judgment set aside.** Where a judgment is set aside for any cause, upon motion, the court may direct and enforce restitution, in like manner, with like effect and subject to the same conditions, as when a judgment is reversed upon appeal."

4. The New York law and procedure were followed.

The petition for rehearing now for the first time seeks to raise an issue of procedural regularity (pp. 4 and 12). It is asserted that the provisions of Section 235 of the New York Civil Practice Act were not complied with.

Procedural regularity was specifically conceded by counsel for Lincoln in their brief filed in opposition to the petition for certiorari, in which they said at page 4:

"Respondent did concede that New York *procedure* for an attachment or a garnishment was followed." (Italics in the original.)

and again at the bottom of the same page:

"The *procedural steps* for attachment were followed." (Italics in the original.)

The record shows (R. 49, 56) that the "Sheriff of New York County on July 19, 1938, duly filed his report and appraisal of said property so attached." The summons and complaint was served on Lincoln in Idaho on July 18, 1938.

It has been specifically held by the New York Court of Appeals that the affidavit referred to in Section 235 in the Civil Practice Act is not jurisdictional; that no time for making, filing or serving the affidavit is specified; that the statute may be sufficiently complied with by filing an affidavit with the judgment roll; and that the Sheriff's return filed in the action is sufficient compliance and the equivalent of an affidavit.

> *The American Bank* v. *Goss,* 236 N. Y. 488 at page 496;
>
> *Howard Converters, Inc.* v. *French Art Mills, Inc.,* 273 N. Y. 238 (particularly at p. 245 where an argument similar to that now advanced by Lincoln is contained in the dissenting opinion, but necessarily disapproved by the majority of the court.)

5. No issue of Huron's negligence raised.

Lincoln seeks to cast doubt (pp. 9 and 10) upon the truth of the following statement taken from page 47 of Huron's main brief:

> "In the instant case, Lincoln filed no answer to the motion for satisfaction and raised no issue of negligence or fault on the part of Huron, or want of liability to the Trust Company in the New York action."

The truth of this statement was not challenged in any way in the brief submitted by Lincoln on January 13th when the cause was heard. Nor is any basis for such a challenge now pointed out. The record is bare of any proofs or attempted proofs by Lincoln tending to cast doubt upon Huron's conduct or good faith in the New York action. No brief, in this Court or below, ever tendered such an issue.

The only argument that was ever made in which the word "negligent" was used with reference to Huron, is quoted at the bottom of page 11 of the petition for rehearing. That argument was simply to the effect that Huron should have opposed the attachment, which Lincoln contended was void as a matter of law. Lincoln thus urged that Huron was "negligent" in failing to oppose such a proceeding, and could of course claim no credit for payment under an invalid attachment.

However, now that it has been established by this Court that the judgment debt was legally attachable in New York, this argument disappears. There could be no duty upon Huron to oppose an attachment to which there was no valid defense. Huron was therefore not "negligent" in declining to engage in such fruitless opposition.

Cf. Harris v. *Balk, supra,* 227, 228.

Lincoln never claimed failure on the part of Huron, negligence, or want of notice, or that Lincoln itself had a valid defense to the New York action. The attorneys for Lincoln made this clear in their brief in the Circuit Court of Appeals, under the heading "Statement of Question Involved", saying (top of p. 20):

> "The entire question to be determined is whether a defendant, against whom a judgment

> in a tort action (claim and delivery) has been entered in the United States District Court in Idaho, may be garnished in the New York Court on account of such judgment, pending his appeal therefrom to the United States Circuit Court of Appeals for the Ninth Circuit".

No other question has ever before been raised or urged by Lincoln's counsel, either below or in this Court.

6. Statement that Lincoln's motion for judgment preceded Huron's motion for satisfaction.

It is twice stated categorically in the petition (pp. 3 and 10) that Lincoln's motion for judgment against the Surety Company was made *before* Huron's motion for satisfaction of judgment. On page 3 it is stated that the transcript "is silent as to when said motion for satisfaction of judgment was filed." This is not true. The record clearly shows that Huron's motion for satisfaction of judgment was filed on March 13 (R. 31, 33, 50). Lincoln's motion against the Surety Company was made the following day (R. 35).

Lincoln's counsel, by inverting the order in which the motions were filed, seek to suggest (p. 10) that Huron's motion was in effect an answer to Lincoln's motion, and that therefore Lincoln did not need to reply. But since Huron's motion was in fact filed first, the argument breaks down. Furthermore, the question is not whether Lincoln "*could* set up anything to defeat * * * the motion to satisfy the judgment without pleading it" (R. 10), but whether Lincoln *did* set up anything to defeat such motion. It had the right and the opportunity to do so. Consequently, the fact that it did not is significant.

7. Use of quotation from the opinion in *Ojus* v. *Manufacturers.*

The petition for rehearing (bot. p. 7) improperly quotes from an opinion of the Circuit Court of Appeals in the case of *Ojus Mining Company* v. *Manufacturers Trust Company, et al.*, 82 Fed. (2d) 74 that "Huron is just another name for the Trust Company". This quotation is used to lend color to an accusation (p. 8) that the attachment proceedings were tainted with connivance and trickery.

The statement that Huron and the Trust Company are identical is not only false, but entirely unsupported by the record. There is no suggestion of any proof to that effect or that the question was ever raised in any form.

Furthermore, no court anywhere ever held that "Huron is just another name for the Trust Company". The opinion from which this quotation was taken [82 Fed. (2d) 74] shows at page 75, middle of the first column, that the matter before the Circuit Court was a ruling of the trial court, granting defendant's motion for a directed verdict at the end of the plaintiff's case. No proofs were produced by the defendant and no facts were ever found by any fact-finding body, because the trial judge withdrew the case from the jury. The recitals in the opinion affirming the District Court, from which the above quotation is taken, were assumptions most favorable to plaintiff, "assumed" for the purpose of deciding that motion (see opinion, *supra*, p. 75). They are not a recital of facts found to be true on any trial or by any court.

The use of this quotation, taken from the opinion of another court in another case involving different parties, and torn completely from its context in an attempt to establish a "fact" on which to base an

argument in support of the instant application for rehearing, is, we submit, a fair indication of the legal worth of the whole petition.

Furthermore, there is no legal merit in respondent's objection, which asserts the "connivance" of Huron and the Trust Company. Nor would it make any difference if Huron and the Trust Company were in fact the same person, or even if Huron had itself been the attaching creditor in New York. Identical objections were examined by the Court of Appeals in the leading case of *Wehle v. Conner*, 83 N. Y. 231 at pages 238-239, and found to be specious. As to the connivance objection, the Court of Appeals said in part, per Finch, *J.*, at page 238:

> "The proposition was simply to show a conspiracy to accomplish a perfectly lawful purpose. The attachments *were* issued for the purpose of preventing the collection by plaintiff of her judgments. There can be no dispute about that. It needed no further evidence to settle that question. Such is the very object of the attachment and the precise purpose of the law in permitting it to issue. The sole point of the offer is that the parties conspired to do what the law authorizes. The act is neither better nor worse for the conspiracy. It is said it was a scheme to 'nullify a valid process of the court'; but if so it was done by another 'valid process of the court'; an event not at all of uncommon occurrence."

And overruling the objection that the garnishee was also the attaching creditor, the Court of Appeals said (pp. 238-239):

> "That the judgment debtor was also one of the attaching creditors is a fact pressed upon our attention. It is a fact in the case. The question asked is whether it is allowable. We are unable to see why it is not. The law which permits the

issue of such attachment awards it to all creditors who bring themselves within its provisions. * * * The learned counsel argues that mischief will result because debtors will procure attachments to be levied upon the debts which they owe and are in process of collection. But an attachment in such a case implies a debt due from the plaintiff in the judgment attached which can serve as the basis of its issue. If such a debt is due the remedy works no wrong. If it is not due, the plaintiff has ample opportunity to resist it in the courts."

Conclusion.

Lincoln's petition for rehearing does not claim that this Court failed to decide, or to decide correctly, any of the issues that were submitted to it at the time of the original hearing. On the contrary, Lincoln seeks now for the first time to argue questions that were heretofore conceded not to be in issue. None of the arguments suggested finds any support in the record. The papers included in the Transcript of Record are those originally designated by Lincoln's counsel when they appealed to the Circuit Court of Appeals (R. 69-70). There is no suggestion, even now, that the record is in any wise incomplete. The assertion of alleged "facts" not found in the record, in an attempt to obtain a rehearing, is therefore quite unjustified.

Wherefore, the petition for rehearing should be denied.

Respectfully submitted,

LEONARD G. BISCO,
DANIEL GORDON JUDGE,
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ALONZO L. TYLER,
Of Counsel.

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P. 1

SUPREME COURT OF THE UNITED STATES.

No. 212.—October Term, 1940.

Huron Holding Corporation and National Surety Corporation, Petitioners,

vs.

Lincoln Mine Operating Company.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[February 3, 1941.]

Mr. Justice Black delivered the opinion of the Court.

This case involves the effect a federal district court should give to state court proceedings attaching, while appeal is pending, a judgment previously rendered by the federal court.

Respondent, Lincoln Mine Operating Company, obtained judgment against petitioner, Huron Holding Corporation, in the federal district court for Idaho. Pending appeal of this judgment to the Circuit Court of Appeals, a New York creditor of Lincoln brought suit on a promissory note against Lincoln in a state court of New York. Upon a showing that Lincoln was an Idaho corporation, the New York court caused a warrant of attachment to issue against Lincoln's New York property.[1] In accordance with New York law,[2] summons upon Lincoln was served by a Deputy Sheriff of Ada County, Idaho. Huron, ~~in answer to~~, the warrant of attachment served upon it in New York, admitted that it was the defendant against which judgment in favor of Lincoln had been entered in the Idaho District Court, and that the judgment was still unpaid, subject to its right on an appeal then pending. After the Circuit Court of Appeals had affirmed the Idaho District Court judgment, but before the mandate had been sent down, the New York court rendered judgment against Lincoln, execution was issued, and under the warrant of attachment the New York Sheriff was commanded to obtain

a New York corporation, answered and

[1] Sections 902 and 903 of Art. 54 of the New York Civil Practice Act authorize courts to issue warrants of attachment against defendants shown to be foreign corporations in actions against them based on "Breach of contract, express or implied, . . ."

[2] Section 233, Art. 25, New York Civil Practice Act.

satisfaction out of the judgment obligation of Huron to Lincoln. Under compulsion of the New York execution Huron paid and then filed a motion in the Idaho court asking that the federal court's judgment be marked satisfied. Lincoln countered with a motion against National Surety Company, the guarantor on Huron's supersedeas bond in the original action, asking that judgment against the surety be entered in favor of Lincoln. After a hearing on both motions, the District Court made findings of fact and conclusions of law, held that the judgment had been fully satisfied, and declined to enter judgment against the surety.[3] The Circuit Court of Appeals reversed.[4] Because the issues involved are important to the orderly administration of justice in the relationship of state and federal courts, we granted certiorari.[5]

Petitioner contends that the attachment was valid under the New York law, and should have been given full effect by the federal court. It is respondent's contention that (1) the attachment proceedings were void; and (2) even if not void, the District Court should not have given effect to them, for the reason that this would be tantamount to an improper deprivation of Lincoln's right to prosecute its suit in the District Court to full payment of the judgment.

First. Here, New York law clearly governed the validity of the attachment proceedings. The Idaho District Court found, and it is not denied, that those proceedings complied with the formal requirements of New York's attachment statutes. But it is contended that at the time of the levy the New York court, under New York law, was without jurisdiction because the Idaho judgment was then pending on appeal and therefore contingent. Respondent points to certain New York cases which lay down the general proposition that "an indebtedness is not attachable unless it is absolutely payable at present, or in the future, and not dependable upon any contingency."[6] But both the District Court and the Circuit Court of Appeals rejected this argument. And indeed the New York court

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[3] 27 Fed. Supp. 720.

[4] 111 F. (2d) 438.

[5] 311 U. S. —.

[6] Herman & Grace *v.* City of New York, 114 N. Y. Supp. 1107, 1110, affirmed, 199 N. Y. 600. Other cases cited by respondent which set out the same general principle are: Fredrick *v.* Chicago Bearing Metal Co., 224 N. Y. Supp. 629, 630; Reifman *v.* Warfield Co., 8 N. Y. Supp. (2d) 591, 592; Sheehy *v.* Madison Square Garden Corp., 266 N. Y. 44, 47.

itself necessarily passed upon this question, adversely to respondent's contention. The garnishee's answer in the New York court disclosed that the judgment was pending on appeal, and the New York court's final judgment was not rendered, nor execution issued, until the Idaho judgment had been affirmed. By its action the New York court necessarily decided that the judgment debt was within the scope of New York's attachment laws. And none of the New York authorities to which the respondents direct our attention militate against the soundness of the New York court's ruling. On the contrary, other decisions of the New York courts lead to the conclusion that the judgment—even though on appeal—was sufficiently definite and final to bring it within the New York statute.[7] To the same effect, in the federal courts the general rule has long been recognized that while appeal with proper supersedeas stays execution of the judgment, it does not—until and unless reversed—detract from its decisiveness and finality.[8]

Second. Respondent's next contention is that even though Huron was compelled to pay the New York judgment as a result of attachment proceedings fully authorized by the New York statutes, the Idaho federal court not only can but should require a second payment of the same amount. The Circuit Court of Appeals so held. But since Huron, owing a judgment debt to Lincoln, paid it to a creditor of Lincoln under a valid New York judgment, it certainly should not be required to pay it a second time, except for the most compelling reasons. "It ought to be and it is the object of courts to prevent the payment of any debt twice over."[9]

It has not been urged here, nor was it urged in the courts below, that Huron was guilty of any negligence, misconduct or fraud in connection with the New York judgment. It has not been claimed that there was a failure to give Lincoln notice of the New York suit against it. No federal statute or constitutional provision is invoked as supporting the contention that the Idaho federal

[7] Shipman Coal Co. *v.* Delaware & Hudson Co., 219 App. Div. 312, affirmed, 245 N. Y. 567. In determining what is the law of a state, we look to the decisions of lower state courts as well as to those of the state's highest court, and follow the same line of inquiry recently pointed out in West *v.* American Telephone & Telegraph Co., No. 44 this term, decided December 9, 1940. And see Erie Railroad Co. *v.* Tompkins, 304 U. S. 64.

[8] E. g., Railway Co. *v.* Twombly, 100 U. S. 78; Deposit Bank *v.* Frankfort, 191 U. S. 499.

[9] Harris *v.* Balk, 198 U. S. 215, 226.

court was under a duty to disregard the effect of the payment made by Huron under the compulsion of the valid New York judgment. What is contended is that historically federal courts have carved out a rule to protect themselves from interference by state courts, and that a plaintiff in a federal court proceeding has an absolute right to prosecute his suit and collect his judgment in that court—a right which would somehow be arrested or taken away by giving effect to the New York attachment. This contention rests primarily upon a statement of this Court in *Wallace* v. *M'Connell,* 13 Pet. 136, 151. That case, a suit on a promissory note, was begun in the federal District Court for Alabama. While it was pending, a suit for collection of the note, based on its attachment, was instituted in an Alabama state court. In the state court action, though tentative judgment was rendered against the federal court defendant as garnishee, the matter was then stayed for six months because no judgment had yet been rendered against the state court defendant. At this point, therefore, actions involving the same issues were concurrently pending in both the state and the federal court without final determination in either. Before final determination of the state proceedings, the case came on for decision in the federal court. That court overruled defendant's plea based on the state court attachment. On appeal, this Court said: "The plea shows that the proceedings on the attachment were instituted after the commencement of this suit. The jurisdiction of the District Court of the United States, and the right of the plaintiff to prosecute his suit in that Court, having attached, that right could not be arrested or taken away by any proceedings in another Court. This would produce a collision in the jurisdiction of Courts, that would extremely embarrass the administration of justice. . . . [The doctrine here announced] is essential to the protection of the rights of the garnishee." The concrete question presented to the Court there appears to have been nothing more than a situation in which two courts were called upon to litigate the same issues at the same time.[10] Such is not true in this case.

Another case relied on by respondent is *Wabash Railroad Co.* v. *Tourville,* 179 U. S. 322. But that case, involving actions in the courts of two states rather than in a state and a federal court, as here, does

[10] Cf. Princess Lida *v.* Thompson, 305 U. S. 456, 466; Insurance Company *v.* Harris, 97 U. S. 331.

not support respondent's contention. In that case this Court did not hold that state laws with reference to attachment and garnishment should not be given effect. On the contrary, it based its decision upon a holding by the Missouri appellate court that the Illinois garnishment was void for failure to comply with statutory requirements, and upon a ruling by the Missouri Supreme Court "that the judgment was foreign to Illinois, and therefore not subject to garnishment there."[11] After basing its judgment on these grounds, the Court added a last statement to the effect that "This Court has held that to the validity of a plea of attachment the attachment must have preceded the commencement of the suit in which the plea is made. *Wallace* v. *M'Connell,* 13 Pet. 136." Whatever may be the present day effect of the principle announced in *Wallace* v. *M'Connell* and reasserted in the *Tourville* case, that principle has no application here. But it is said that a broader principle, stemming from those cases, is here applicable. And it is true that some courts, both state and federal, have adopted the broader rule for which respondent contends.[12] The leading federal case on the subject is *Thomas* v. *Wooldridge,* 23 Fed. Cas. 986, No. 13,918. The rule in that case, as announced by Justice Bradley on circuit, was that "judgments of state and federal courts should not be subject to attachments issued by each other." The reasons there given to support this rule were: the debt was quasi in custodia legis; attachments of it would therefore interfere with the court's dignity and prerogatives, excite jealousies and bring about conflicts of jurisdiction; many rights are still left for adjustment after judgment and therefore attachment of a court's judgment would be an inconvenient,

[11] If by this the Court meant that under Illinois law such a judgment was not subject to garnishment, the case is nothing more than a holding that one state need not give full faith and credit to a void act of a sister state. But both the Missouri Supreme Court (140 Mo. 614, 624) and this Court (179 U. S. 322, 327) cited Drake on Attachments (7th ed. 1891) § 625 for the proposition that by the weight of authority a judgment of one court was not subject to attachment in another court. This citation of the "weight of authority" might indicate that this Court was deciding the issue as a question of "general law", under Swift *v.* Tyson, 16 Pet. 1. If so, this aspect of the decision is no longer of any weight. Erie Railroad Co. *v.* Tompkins, 304 U. S. 64.

[12] E. g., Thomas *v.* Wooldridge, 23 Fed Cas. 986, No. 13,918; United States Shipping Board Merchant Fleet Corp. *v.* Hirsch Lumber Co., 35 F. (2d) 1010; Elson *v.* Chicago, R. I. & P. Ry., 154 Iowa 96. Contra: Shipman Coal Co. *v.* Delaware & Hudson Co., 219 App. Div. 312, affirmed, 245 N. Y. 567; Fithian *v.* New York & Erie R. R., 31 Pa. 114. And compare McNish *v.* Burch, 49 S. D. 215, with Hardwick *v.* Harris, 22 N. M. 394.

dangerous and potentially fraud-ridden interference with judicial proceedings. Justice Bradley was also of opinion that recognition of this rule was practically compelled by *Wallace* v. *M'Connell.*

It is our opinion that no such broad general rule exists. This does not, however, mean that a court which has rendered a judgment is without power to exercise jurisdiction, when properly invoked, to adjudicate newly asserted rights related to the judgment debt. It does mean that later opinions of this Court have undermined the basic reasoning upon which Justice Bradley relied in declaring that judgments in a federal court were never subject to attachment elsewhere. For it is now settled that attachment is wholly the creature of, and controlled by, the law of the state; property and persons within the state can be subjected to the operation of that local law; power over the person who owes a debt confers jurisdiction on the courts of the state where the writ of attachment issues; and by reason of the constitutional requirement that full faith and credit be given the valid actions of a state, courts of one state must recognize valid attachment judgments of other states.[13] And under congressional enactment federal courts must also give full faith and credit.[14] These later decisions are but a recognition of the greatly developed statutory use of attachment by the states, a development brought about by the increased mobility of persons and property and the expanded area of business relationships. Whatever may have been the necessity for the rule in other times, it does not fit its present day environment.

Further, we do not here, as in *Wallace* v. *M'Connell,* have a case in which two courts are proceeding in the same matter at the same time. The New York court has proceeded under New York law to final judgment. It has compelled obedience to its judgment. The New York proceedings did not arrest or take away the right of Lincoln to try out its issues with Huron in the federal court for Idaho. Those issues had already been tried and determined in that court, and its jurisdiction to adjust and adjudicate newly asserted rights relating to the judgment had not been invoked. There was therefore no possibility of collision between the two courts, for similar issues were not pending before them at the same time. In fact, far

[13] E. g., Harris *v.* Balk, 198 U. S. 215, 222; Louisville & Nashville R. R. *v.* Deer, 200 U. S. 176, 178; Baltimore & Ohio R. R. *v.* Hostetter, 240 U. S. 620.

[14] 1 Stat. 122, as amended, 28 U. S. C. § 687. And see note 17, *infra.*

from colliding with the Idaho court, the New York court accepted as final that court's determination of the issues that it had passed on. For the suit in New York was based on the Idaho judgment, and not on the original cause of action, and "A cause of action on a judgment is different from that upon which the judgment was entered."[15]

Both the Idaho federal court and the New York state court decided matters within the respective authority of each. To give effect to the judgment rendered in the New York attachment proceedings cannot, in any manner, interfere with the jurisdiction of the Idaho court. While the Idaho court did have authority to issue an execution for the collection of an unpaid judgment, it would not have enforced an execution for the benefit of Lincoln if the judgment had previously been paid directly to Lincoln. Nor should it issue an execution when the money was paid to Lincoln's creditors by reason of valid attachment proceedings. For this would be to exercise the jurisdiction of a federal court to render ineffective that protection which a garnishee should be afforded by reason of having obeyed a judgment rendered by a state in the exercise of its constitutional power over persons and property within its territory.[16] To take such a step would constitute a denial of that full faith and credit which a federal court should give to the acts of a state court.[17]

The District Court properly ordered that its judgment be marked satisfied, and correctly refused to render judgment on the supersedeas bond. The judgment of the Circuit Court of Appeals is reversed, and the judgments of the District Court are affirmed.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[15] Milwaukee County *v.* M. E. White Co., 296 U. S. 268, 275.

[16] Cf. United States *v.* Klein, 303 U. S. 276, 281-282.

[17] Pennoyer *v.* Neff, 95 U. S. 714, 733; Goldey *v.* Morning News, 156 U. S. 518, 521; Cooper *v.* Newell, 173 U. S. 555, 567-568; Davis *v.* Davis, 305 U. S. 32, 39-40.